

**IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

FILED

2022 JAN 19 AM 8:47

**AXIALL CORPORATION and  
WESTLAKE CHEMICAL  
CORPORATION,**

JOSEPH M. RUCKI

**Plaintiffs,**

**vs.**

**Civil Action No.: 19-C-59  
Presiding Judge Wilkes  
Resolution Judges Carl and Nines**

**NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA., *et al.*,**

**Defendants.**

**ORDER DENYING DEFENDANTS' EXPEDITED MOTION TO STAY PROCEEDINGS**

This matter came before the Court this 19th day of January, 2022, upon Defendants' Expedited Motion to Stay Proceedings. The Plaintiffs, Axiall Corporation and Westlake Chemical Corporation (hereinafter "Plaintiffs" or "Westlake"), by counsel, David R. Osipovich, Esq., and Defendants, National Union Fire Insurance Company of Pittsburgh, Pa., Allianz Global Risks US Insurance Company, ACE American Insurance Company, Zurich American Insurance Company, Great Lakes Insurance SE, XL Insurance America, Inc., General Security Indemnity Company of Arizona, Aspen Insurance UK Limited, Navigators Management Company, Inc., Ironshore Specialty Insurance Company, Validus Specialty Underwriting Services, Inc., and HDI-Gerling America Insurance Company (hereinafter "Defendants" or "Insurers"), by counsel, Debra T. Varner, Sr., Esq., have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full

consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

### **FINDINGS OF FACT**

1. This matter surrounds an insurance coverage dispute involving Defendants' alleged failure to cover Plaintiff Westlake Chemical Corporation (hereinafter "Plaintiff" or "Westlake") for property damage at its Marshall County, West Virginia plant (referred to by the parties as the Natrium Plant) caused by a railroad tank car rupture and resulting chlorine release that occurred in August 2016. *See* Compl. The instant civil action involves claims by Plaintiffs that Defendants breached their insurance contracts, and also engaged in bad-faith claims handling.

2. On or about November 19, 2021, this Court entered orders on certain motions for summary judgment filed by the parties regarding coverage issues in this civil action. *See* Defs' Mot., p. 1.

3. On December 17, 2021, Defendants filed a Notice of Appeal regarding certain orders entered on November 19, 2021. *See* Pls' Resp., p. 5.

4. Defendants aver in the instant motion that they seek a stay of proceedings while they seek appellate relief from certain orders entered by the Court on November 19, 2021. *See* Defs' Mot., p. 1, 2. Defendants aver a stay is "appropriate given the effect of the Orders on the issue of Policy response and potential indemnity in this action". *Id.* at 2. Further, Defendants state that a "reversal of the Orders will result in a finding of no coverage and will eliminate any bad faith claim under Georgia law". *Id.*

5. On or about January 7, 2022, Plaintiffs filed Plaintiffs' Brief in Opposition to Defendants' Expedited Motion to Stay, averring that the second round of motions for summary

judgment (the Court notes these are the non-coverage motions for summary judgment) are in the process of becoming fully briefed and will be fully briefed and ripe for the Court's consideration or about January 18, 2022, expert depositions are occurring currently, and the November 19, 2021 Orders are not final judgments in any way as they ruled upon partial motions for summary judgment. *See* Pls' Resp., p. 2, 4. In support, Plaintiffs claim Defendants' Notice of Appeal is an improper request for an interlocutory appeal of this Court's summary judgment orders that do not completely dispose of any claim or party. *Id.* at 8.

6. On or about January 14, 2021, Defendants filed Defendants' Reply in Further Support of Their Expedited Motion to Stay Proceedings, reiterating their position that this Court entering a stay during the pendency of the appeal before the West Virginia Supreme Court of Appeals would promote judicial efficiency, stating that is clearly in the best interests of all parties involved to have the coverage issues resolved on appeal before proceeding to trial. *See* Reply, p. 3, 8-9. Defendants' Reply argues that Plaintiffs' position that the November 19, 2021 Orders are not final because they dispose of some, and not all, of Defendants' defenses is "nonsensical" and that the language in the Court's Order clearly constitutes a final ruling as to the availability of certain exclusions to Plaintiffs' claims. *Id.* at 4-5.

7. The Court finds the issue ripe for adjudication.

### **CONCLUSIONS OF LAW**

Rule 28 of the West Virginia Rules of Appellate Procedure governs stays. Rule 28(a) provides, in pertinent part:

Any person desiring to present an appeal under Rule 5 may make an application for a stay of proceedings to the circuit court in which the judgment or order desired to be appealed was entered...The circuit court...may grant a stay suspending the execution of a judgment or order, modifying, restoring, or granting an injunction...



W. Va. R. App. P. 28.

Here, the Court declines to exercise its discretion in granting the requested stay. The Court considers that the request is not agreed to by opposing counsel, the fact that this civil action is at the “eleventh hour” in terms of finishing discovery in a case that has been pending for quite some time, the fact that briefing for the non-coverage motions for summary judgment should be completed and ready for review and decision/entry of Orders by the undersigned by January 18, 2022, and the fact that expert depositions are in progress currently and scheduled through January 2022.

The Court considers many of these tasks are already in progress – the tail end of a voluminous<sup>1</sup> discovery period. The Court, recognizing a reversal of its Orders could create a finding of no coverage, eliminating bad faith claims, finds the parties should continue progressing in this civil action by taking the remaining expert depositions which are scheduled for the remainder of this month. Thus, the Court finds judicial economy would best be served by denying the request for a stay at this time.

For all of these reasons, the Court finds the instant Expedited Motion to Stay Proceedings shall be DENIED.

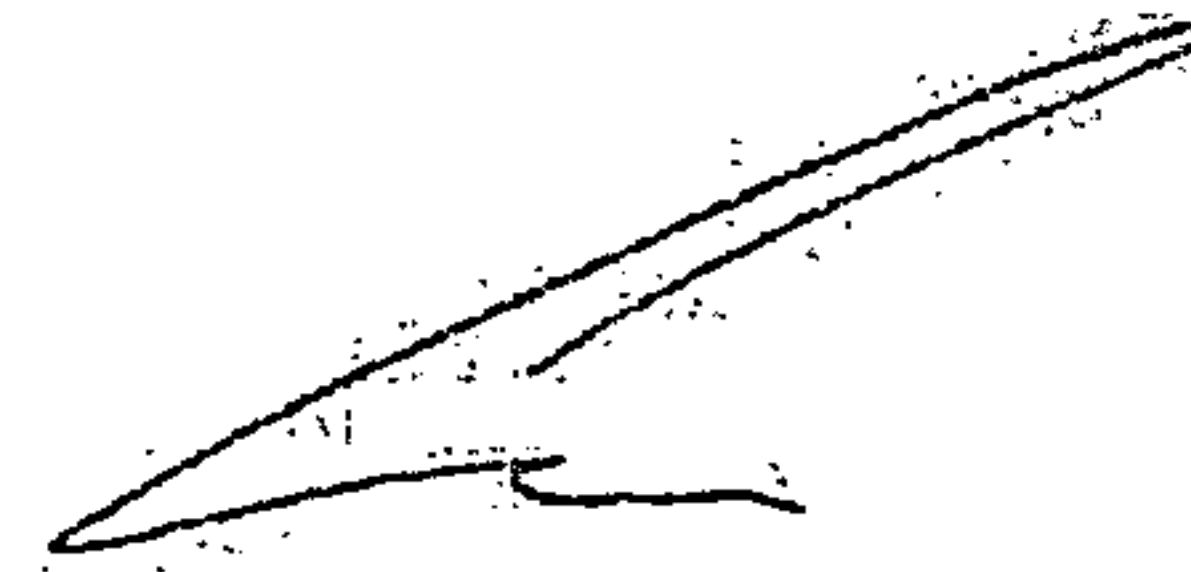
### **CONCLUSION**

Accordingly, it is hereby ADJUDGED and ORDERED that Defendants’ Expedited Motion to Stay Proceedings is hereby DENIED. The Court notes the objections and exceptions of the parties to any adverse ruling herein.

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<sup>1</sup> For instance, it was proffered that the parties have already produced millions of pages of documents in written discovery, and have deposed 75 fact witnesses in this matter. See Pls’ Resp., p. 8.

The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.



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JUDGE CHRISTOPHER C. WILKES  
JUDGE OF THE WEST VIRGINIA  
BUSINESS COURT DIVISION